IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J. DAVID JAMES, Plaintiff,	: :	CIVIL ACTION
v.	:	NO. 01-857
ALLENTOWN BUSINESS SCHOOL, Defendant.	: :	

MEMORANDUM AND ORDER

LEGROME D. DAVIS, J. MAY ___, 2003

J. David James ("Plaintiff") instituted this action for racial discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C.A. §§ 2000e to 2000e-17, 42 U.S.C.A. § 1981 ("§ 1981"), and 42 U.S.C.A. § 1985(3) ("§ 1985(3)"). Plaintiff, who is an African-American, alleges that he was subjected to a hostile working environment, and that he was ultimately terminated from his position with the Allentown Business School ("Defendant" or "School"), on the basis of his race in violation of Title VII and § 1981. Plaintiff also alleges that various employees of Defendant conspired to impose restrictions upon his employment on the basis of his race in violation of § 1985(3). Defendant generally denies Plaintiff's allegations of racial discrimination, and counters that Plaintiff was terminated because of poor job performance. Presently before the Court is Defendant's Motion for Summary Judgment, which the Court will grant for the reasons set forth below. Because the resolution of this Motion requires an analysis of whether Plaintiff's allegations support his racial discrimination claims, a

detailed review of the factual allegations regarding Plaintiff's employment with Defendant follows.

I. SUMMARY OF FACTS

A. 1992-1997

The School is located in Allentown, Pennsylvania, and over 1,300 students attend the School each year. Declaration of Virginia Carpenter ("Carpenter Decl."), attached to Defendant's Motion for Summary Judgment ("Def.'s Motion") as Ex. B, at ¶¶ 1, 2. The School's parent company is Career Education Corporation ("CEC"). Id. at ¶ 3. In July 1991, Defendant hired Plaintiff to work as a part-time instructor. Id. at ¶ 4. While working as a part-time instructor, Plaintiff reported directly to Daneen Phelps ("Ms. Phelps") who was, at that time, the Assistant Dean of Education. Id. at ¶ 5. Plaintiff's "second-level supervisor" was Dottie Kaplan ("Ms. Kaplan"), who was, at that time, the Dean of Education. Id. In 1992, Plaintiff was promoted to a full-time instructor position, at which time Ms. Kaplan became Plaintiff's direct supervisor. Id.

Ms. Kaplan was Plaintiff's direct supervisor from 1992 until October, 1997. Id. at ¶¶ 5, 6. The evidence establishes that there was a significant amount of friction between Plaintiff and Ms. Kaplan during this time. This friction appears to have stemmed, in significant part, from conflicting teaching philosophies. See Plaintiff's Deposition ("Pl.'s Dep."), attached to Def.'s Motion as Ex. C, at 70-73. The evidence establishes that Plaintiff held his students to very high and rigid standards. Id. For example, Plaintiff testified during his deposition:

> I said to her that we were training people to be in the medical profession. And those three students who had dropped, did not have what it took to be there. Meaning that some could barely read. And

> obviously, if you're trying to teach anatomy and physiology to people who can barely read, there's going to be some fallout.
>
> . . . .
>
> When you teach students who within eight months are going to be out there working with your parents, working on you, you have to set the bar at a certain spot. And other teachers, their way of dealing with the fact that our students at that point, some of them did not have the background to be there, they would just make it easier and easier and easier. And I just held them to the standard that says, please, this is where we need to be, and let's get there. And to someone who comes in and is not very confident in themselves, they may see this as threatening.

Pl.'s Dep. at 71-73. The evidence also establishes that Plaintiff frequently used harsh methods to motivate his students to meet these high standards. For example, Plaintiff acknowledged in his deposition that he would ask the students who had received an A on a test to raise their hands during class in order to draw attention to those who needed to improve their performance. See id. at 175.

On the other hand, Ms. Kaplan's primary concern was that Plaintiff employ a more encouraging and supportive style of teaching, one which would minimize student complaints. Pl.'s Dep. at 70-73. Representative of Ms. Kaplan's teaching philosophy is a memo from her to Plaintiff, dated January 28, 1993, which states:

> A teacher's role is to encourage students. . . . If they are not comfortable or if they feel inadequate, they will find reasons not to come to school and they will drop out. . . .
>
> This past week, three new MOM students have called and said that they are totally overwhelmed by your class. They said things like "He makes me feel stupid", "He puts us down", "The work is totally overwhelming". They were all considering dropping out.
>
> You need to rethink your initial approach to new students. Establish an environment where students are successful and learn to feel good about themselves. Make them want to come to your class

> not only because they are learning, but because it is an encouraging place to be.

Def.'s Motion, Ex. D. The declaration averments of the School's President, Virginia Carpenter ("Ms. Carpenter"), further evinces the discord that existed between Plaintiff and Ms. Kaplan. According to Ms. Carpenter, she had to intervene in several disputes between Plaintiff and Ms. Kaplan, and Plaintiff often argued with Ms. Kaplan and challenged her authority. Id. at ¶ 6.

According to Plaintiff, Ms. Kaplan also subjected him to frequent harassing conduct between 1992 and 1997, and treated him less favorably than other instructors. Pl.'s Dep. at 58-69.[1] Plaintiff specifically points to the following conduct. First, Plaintiff alleges that, although he was generally encouraged by other supervisors to continue his education and receive his college degree during the time he was employed by the School, Ms. Kaplan discouraged Plaintiff in this regard. Pl.'s Dep. at 34-38. Second, Plaintiff alleges that Ms. Kaplan reduced his teaching status to part-time, resulting in less pay, despite the fact that he was teaching as many or more course hours than other full-time instructors. Id. at 58-62. Third, according to Plaintiff, when complaints were lodged about him, Ms. Kaplan would yell at him and deride him, while she would not subject other instructors to similar treatment under similar circumstances. Id. at 64-65. Fourth, Plaintiff alleges that Ms. Kaplan would ask Plaintiff to complete a task by a particular date, and then, when Plaintiff complied with such instructions, she would belatedly inform Plaintiff that the deadline had been changed and that he had missed the deadline. Id. at 66-67.

[1] According to Plaintiff, between 1992 and 1997, Ms. Kaplan was the only employee of the School who harassed him. Pl.'s Dep. at 65.

When Plaintiff was asked during his deposition the basis for his belief that Ms. Kaplan's treatment of him was based on his race, Plaintiff's testimony was limited to a single point: that another African-American instructor had told Plaintiff that Ms. Kaplan treated him in a similar fashion. Id. at 67-68. However, Plaintiff could only recall this instructor's first name, id., and Plaintiff was unable to identify any specific incidents about which he has first-hand knowledge to support his contention that Ms. Kaplan did not generally treat all instructors in a similar fashion. Id. at 68-69.[2] Plaintiff acknowledged that Ms. Kaplan never made any racial remarks about him, and also acknowledged that it is possible that Ms. Kaplan generally treated all instructors poorly and that Plaintiff was simply unaware of this fact. Id.

B. 1998-1999

In April, 1998, Plaintiff interviewed for the position of Department Chairperson of the Allied Health Department ("Department"). Carpenter Decl. at ¶ 8. Ms. Carpenter, Ms. Phelps (who was then the Dean of Education), and Darlene Gorr (who was then the Associate Dean of Education) selected Plaintiff for this position. Id. The record indicates that, after Plaintiff was selected for this position, two incidents occurred which facially involved racial animus. First, according to Plaintiff, at some point in 1998 or 1999, he received in his mailbox at the School a single sheet of paper with a picture of Adolph Hitler and a typed "poem" as follows:

> A teacher I had within the past year,
> Who gets his kicks by threatening fear.
> A man who thinks he is noble and supreme,

[2] As will be discussed in further detail below, Plaintiff has not offered, nor has he even sought to obtain, the deposition or affidavit testimony of any individuals other than himself. Thus, because Plaintiff did not testify that he witnessed first-hand Ms. Kaplan's treatment of other instructors, the only evidence of record regarding Ms. Kaplan's treatment of other instructors is Plaintiff's own conclusory and hearsay testimony.

Then reality appears, and he sees it is a dream.
I use the word "man", but then I do wonder,
Did I make a mistake, or a total blunder?
I will not change the name, and I know it is rotten,
Picturing the subhuman, bending down, picking cotton.
It is in my mind now, getting bigger and bigger,
Great Scott, it has come, the name shall be N----R!

Def.'s Motion, Ex. M. Apparently Plaintiff found this document inside of an envelope upon which appeared a note ("David from suggestion box Ginny"), and Plaintiff identified this handwriting as belonging to Ms. Carpenter. Pl.'s Dep. at 100-04. Plaintiff asserts that this document, which was apparently written and submitted to the School by a student, was reviewed by Ms. Carpenter and Ms. Phelps before it was forwarded by Ms. Carpenter to Plaintiff. Id. at 106.[3] According to Plaintiff's deposition testimony, his sole basis for this assertion is that, upon receiving the document, he spoke with Ms. Phelps, who allegedly told him that Ms. Carpenter had opened the envelope and had seen the document, and that Ms. Phelps counseled Ms. Carpenter not to forward it to Plaintiff, but that Ms. Carpenter had nonetheless done so. Id. at 103-06.

However, Ms. Carpenter avers in her declaration that she never saw this document prior to the EEOC investigation in this matter. See Carpenter Decl. at ¶ 27. Also, Ms. Phelps avers in her declaration that, although Plaintiff mentioned to her at some point that he had received a document with a picture of "Hitler" and a racist poem, she did not see this document at any time before Plaintiff's employment was terminated. Declaration of Daneen Phelps ("Phelps Decl."),

[3] Plaintiff also contends that he was informed once by Ms. Carpenter, once by Ms. Gorr, and once by Ms. Phelps that he was generally referred to as a "Hitler" (or a "little Hitler") around the School, and that this reference was motivated by racial prejudice. Id. at 111-13. However, Plaintiff has not explained why the Court should interpret references to an African-American as a "Hitler" as being motivated by racial prejudice.

attached to Def.'s Motion as Ex. F, at ¶¶ 4, 7. Plaintiff did not depose Ms. Phelps or Ms. Carpenter, and their declarations, offered by Defendant, directly contradict these allegations. Therefore, the only evidence to support these factual allegations is Plaintiff's own hearsay testimony.

As to the second incident involving racial animus on its face, on March 15, 1999, Plaintiff informed Ms. Carpenter that he had heard that an instructor in the Department, Helene Colusso ("Ms. Colusso"), had referred to Plaintiff as either a "n----r" or a "sandn----r" or a "jigger" to another instructor. Carpenter Decl. at ¶ 16; Pl.'s Dep. at 159. The next day, Ms. Carpenter spoke to Ms. Colusso, who confirmed Plaintiff's allegation, and Ms. Carpenter verbally reprimanded Ms. Colusso as a result. Carpenter Decl. at ¶ 16. Ms. Colusso also confirmed the allegation in a conversation with Plaintiff. Pl.'s Dep. at 159-62.

The record also contains an abundance of undisputed evidence regarding Plaintiff's job performance after being promoted to Department Chairperson. This evidence will be condensed into the following four categories: (1) Plaintiff's teaching style and his interactions with students in the classroom; (2) Plaintiff's interactions with colleagues and individuals outside the School; (3) Plaintiff's conduct toward his supervisors; and (4) Plaintiff's fraternization with students.

First, the record contains numerous student evaluations received in 1998 and 1999 reflecting Plaintiff's abrasive and often demeaning teaching style. For example, in November, 1998, the School received student evaluations in which students consistently complained: that Plaintiff was arrogant and self-centered; that Plaintiff was not skillful at communicating with students; that Plaintiff demeaned, insulted, and belittled students; that Plaintiff would call students "bucket-head" and publicly humiliate students who did poorly on tests; that Plaintiff was

often late arriving to class; and that Plaintiff would joke too much and would sometimes offend the students. See Def.'s Motion, Ex. F at Tab 1; Phelps Decl. at ¶ 5.[4] The School also received student evaluations in February, 1999, in which students consistently commented: that Plaintiff was arrogant, "cocky," "evil," and was on a "power trip"; that Plaintiff would "pick favorites" and try to intimidate and ridicule certain students; that Plaintiff's behavior was unprofessional and that he "lacks people skills"; that Plaintiff would spend too much time talking about himself; and that Plaintiff did not treat the students with respect. See Def.'s Motion, Ex. F at Tab 2; Phelps Decl. at ¶ 6. In June, 1999, the School received additional student evaluations in which some students commented: that Plaintiff needed to improve his "teacher skills"; that Plaintiff was arrogant and often bragged about himself; that Plaintiff would make students feel inferior and stupid; and that Plaintiff would address students in a condescending and disrespectful manner. See Def.'s Motion, Ex. F at Tab 3; Phelps Decl. at ¶ 6.

Second, the record contains an abundance of evidence regarding complaints made about Plaintiff by other instructors, and even non-employees. For example, in February, 1999, Ms. Carpenter received a letter from a former instructor, Roberta Borgman ("Ms. Borgman"), accusing Plaintiff of making defamatory statements about her, and of fraternizing with students

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[4] During his deposition, when asked whether he ever made jokes about erections or masturbation in class, Plaintiff testified: "Well, for example, when we were talking about masturbation . . . I told a story which some may have interpreted as a joke, of a colleague . . . who had a young man who came in with a constant drip . . . [a]nd they found out that he had never had sex before. And the doctor found out that his seminal vesicles were producing so much secretion . . . and he was not doing anything with it. That's why the drip was. And the doctor prescribed masturbation. . . . Well, the story was that some, and it's a true story, . . . the only tissue in the body that's constantly denied blood is covinous erectile tissue in a male. A male must have so many erections in a day to maintain the sanctity of the tissue. So, you know, you can say to your loved one that . . . by us being together, that I am maintaining the safety of your tissue . . . ." Pl.'s Dep. at 172-74.

and making inappropriate sexual comments to students. See Carpenter Decl. at ¶ 12; Def.'s Motion, Ex. B, Tab 1.[5] Also in February, 1999, Ms. Colusso informed Ms. Carpenter that, according to various students, Plaintiff had made derogatory comments about her during class, and this report was confirmed to Ms. Carpenter by another instructor who had received the same information from students. Carpenter Decl. at ¶ 13. According to Ms. Carpenter, when he was confronted, Plaintiff said that either he had been misquoted or the students were lying. Id. According to Plaintiff, however, his comments about Ms. Colusso were taken out of context, and his actual statement to his students was: "[Y]ou know, you all love [Ms. Colusso], don't you? . . . And if you're not wearing your lab coats and her boss walks in and she gets fired, you wouldn't want that to happen, because you love her . . . ." Pl.'s Dep. at 133. Also in February, 1999, Ms. Carpenter received a complaint about Plaintiff from the president of the National Association for Health Professionals ("NAHP") (an organization that the School uses for certain testing services), and a letter from a customer service representative at NAHP. Carpenter Decl. at ¶ 14; Def.'s Motion, Ex. B, Tab 2 and 3. The customer service representative stated that during a particular conversation she had had with Plaintiff, Plaintiff became increasingly "agitated and vindictive," that Plaintiff had talked over her and had snickered at her, and that the conversation

[5] In her letter to Ms. Carpenter, Ms. Borgman stated that she received "calls weekly from multiple students" who told her that Plaintiff said in class "that when he gets to 'know' them better, he would tell them exactly what he thinks" of Ms. Borgman. Def.'s Motion, Ex. B, Tab 1. She also stated that students at her current school knew of Plaintiff's reputation for drinking at local establishments with students. Id. Finally, she stated that she intended to seek legal representation regarding Plaintiff's repeated defamatory remarks to his students about her unless the School issued a written apology to her and established a plan for action to be taken to prevent similar incidents in the future. Id.

was "probably the most upsetting one" she had experienced during her nine years working in customer service. Def.'s Motion, Ex. B, Tab 2 and 3.

Third, the record also contains undisputed evidence regarding Plaintiff's conduct toward his supervisors. For example, in February, 1999, Plaintiff met with Ms. Phelps and two students to address a complaint lodged by the students. Pl.'s Dep. at 119. According to Plaintiff, the two students were receiving grades below passing and lied about Plaintiff's behavior and the reasons for their grades. Id. at 120-23. Because Plaintiff felt that Ms. Phelps believed the students rather than him, he asked to be excused from the meeting and left. Id. Ms. Phelps asked Plaintiff to return to the meeting, and Plaintiff refused. Id. at 123. Plaintiff met with Ms. Phelps later that day, at which time Plaintiff and Ms. Phelps yelled at each other while the door to the office was open and other instructors could hear, and Ms. Phelps continued yelling when she left the office and walked down the hall to Ms. Carpenter's office. Id. at 124-27. As a result of this incident, Plaintiff was placed on probation. Id. at 129-30. Plaintiff does not contend that this incident was the result of racism, but rather contends that he was placed on probation because he violated the "pecking order" or "chain of command" at the School by yelling at a superior. Id. at 129-33. On another occasion, in September, 1999, Ms. Carpenter was informed that Plaintiff had acted in an insubordinate manner toward Christine Saadi ("Ms. Saadi"), the School's Director of Regulatory Compliance, by refusing to permit a special needs student with a disability to be assisted by a "reader" while taking a test in one of his courses. Def.'s Motion, Ex. J; Carpenter Decl. at ¶ 24. A meeting was conducted with Ms. Saadi, Ms. Phelps and Plaintiff to address the issue, and Plaintiff ultimately acquiesced. Def.'s Motion, Ex. J.

Fourth, the record contains undisputed evidence that Plaintiff fraternized with female students on numerous occasions in violation of School policy. For example, in June, 1999, one of Plaintiff's former students (who was eighteen years old) informed the School that in January, 1999 while she was still a student in one of Plaintiff's classes, Plaintiff gave her alcohol at his house and had sexual relations with her, and that there had existed an ongoing intimate relationship between them for a number of months. Carpenter Decl. at ¶ 20. Plaintiff acknowledges that: he had an intimate relationship with one female student in one of his classes for approximately three months in 1998; he had an intimate relationship with a second female student (the student who subsequently informed the School about the relationship) for approximately two months in early 1999; and he had intimate relationships with at least two other former students. Pl.'s Dep. at 201-04. However, according to Plaintiff, the School policy against fraternizing with students was not enforced until February or March of 1999, when Ms. Carpenter informed Plaintiff that the School would start to enforce the policy, and thereafter Plaintiff did not fraternize with students. Id. at 196-97. Contrary to this latter assertion, Ms. Carpenter asserts in her declaration that the student who informed the School about her relationship with Plaintiff stated that the relationship continued through the end of April, 1999, after Ms. Carpenter had discussed the non-fraternization policy with Plaintiff in March, 1999. Carpenter Decl. at ¶ 20.

Considerable efforts were made by the School to give Plaintiff opportunities to improve his teaching style. For example, on March 15, 1999, a meeting occurred between Plaintiff and Ms. Carpenter, Mari-Ann Deering (the head of CEC's Human Resources Department), and Carol Menck (a managing director of CEC charged with overseeing the School). Carpenter Decl. at ¶

15. At this meeting, an "action plan" was provided to Plaintiff. Id.[6] On March 19, 1999, Ms. Carpenter met with Plaintiff and his immediate supervisor Ms. Gorr to discuss Plaintiff's action plan and to address any issues between Plaintiff and Ms. Gorr. Id. at ¶ 17. Ms. Carpenter also instructed Plaintiff to confer with Ms. Gorr before making important decisions, to "work as a team member," and not to use a "dictatorial management style." Id. In August, 1999, Ms. Gorr presented Plaintiff with a performance appraisal, which included the following notes regarding areas in which Plaintiff needed to improve:

> Personnel Management – We have had ongoing discussions about your management style. You tend to manage by fear and intimidation at times and this is not the style that is acceptable at ABS. . . .
> Student evaluations – Your evaluations continue to vary. Often students complain about your tactics of intimidation in the classroom. You seem to have a better awareness of this style, but you need to continue working to control this tendency.
> Teamwork – You tend to distrust your supervisors and teachers. . . . We have discussed the negative impact that fraternizing with students can have on your reputation. We do not condone this behavior and we ask you to be more conservative and careful in your relations with students. . . .
> Your style as a manager is often very abrasive and I don't believe you have gotten the best results from staff or students. We need to work on this and be sure that you are conscious of your weaknesses. I believe you really love to teach and you have great knowledge. I think you need to remember that staff and students see you as an expert, you don't need to "flex your muscles" to get control.

Def.'s Motion, Ex. H. Plaintiff's overall rating in this performance appraisal was "adequate." Id.[7]

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[6] It was apparently at this meeting that the School's policy prohibiting fraternizing with students was discussed with Plaintiff. Carpenter Decl. at ¶ 20; Def.'s Motion, Ex. B at Tab 4.

[7] Plaintiff refused to sign this performance appraisal because he believed it

(continued...)

The final "straw" came in October, 1999, when a student complained to the School about Plaintiff's treatment of her during class. Id. at ¶ 25. According to Ms. Carpenter, "[t]he student was so upset about the way [Plaintiff] had treated her that she began hyperventilating as she described his overbearing and arrogant classroom style. She also felt that [Plaintiff] preyed on weaker female students in his class. The student refused to return to [Plaintiff's] class and stated that she would go to another school if necessary to finish the class." Id. Finally, on October 11, 1999, Ms. Carpenter decided to terminate Plaintiff's employment. Id. at ¶ 26.

II. PROCEDURAL HISTORY

Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on December 1, 1999, alleging racial discrimination and retaliation. See Def.'s Motion, Ex. K.[8] The EEOC sent a right-to-sue letter to Plaintiff, and a copy to Plaintiff's counsel, on November 17, 2000. See Def.'s Motion, Ex. L. Plaintiff then filed the Complaint in this action on February 20, 2001, alleging violations of Title VII, § 1981, and § 1985(3). See Complaint. Specifically, the Complaint alleges the following facts: that restrictions were placed upon Plaintiff in his position as Department Chairperson that were not placed upon other Department Chairpersons, including prohibiting Plaintiff from choosing which classes he and the instructors in the Department would teach, and prohibiting Plaintiff from hiring and evaluating the Department staff; that Plaintiff was subjected to harassment as early as 1994; that Ms. Carpenter forwarded the document with the Hitler picture and racist poem to Plaintiff in January,

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[7](...continued)
"contain[ed] many inaccuracies and comments with which [he did] not agree." Def.'s Motion, Ex. I; Carpenter Decl. at ¶ 23.

[8] Plaintiff's Complaint does not contain an allegation of retaliation.

1999; that in February, 1999 and again in July, 1999, Ms. Phelps publicly humiliated Plaintiff by yelling and screaming at him; that in March, 1999, an instructor in the Department had used a racial slur in referring to Plaintiff during a conversation with another employee of the School, and that she was subjected to minimal discipline as a result; that the School maintained a file of student complaints lodged against Plaintiff because Plaintiff was the only African-American employee at the time, and that similar complaints against Caucasian teachers were ignored; and that Plaintiff was terminated on October 11, 1999. See id. at ¶¶ 1-17. The "First Claim for Relief" in the Complaint alleges that Defendant's racially discriminatory treatment of Plaintiff violated both Title VII and § 1981. Id. at ¶¶ 18-27. The "Second Claim for Relief" alleges that "Defendant, in the persons of [Ms. Carpenter], [Ms. Phelps], and others, conspired together" to discriminate against Plaintiff in violation of § 1985(3). Id. at ¶¶ 28-33.

On June 6, 2002, Defendant filed the present Motion for Summary Judgment. Plaintiff has filed a Brief in Opposition to Defendant's Motion for Summary Judgment ("Pl.'s Brief"), and Defendant has filed a Reply Memorandum of Law in Further Support of its Motion for Summary Judgment ("Def.'s Reply").

III. LEGAL STANDARD

In order to prevail on a summary judgment motion, the moving party must show from the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the court must view the facts from the evidence submitted in the light most favorable to the non-moving party, and the court must take the non-movant's allegations as true.

Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). A fact is *material* only if it might affect the outcome of the lawsuit under the governing substantive law, and a dispute about a material fact is *genuine* only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Once the moving party establishes "that there is an absence of evidence to support the non-moving party's case," Celotex Corp. v.. Catrett, 477 U.S. 317, 325 (1986), the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (U.S. 1986). The nonmoving party may not rely on bare assertions, conclusory allegations or suspicions. Fireman's Ins. Co. of Newark v. DuFresne, 676 F.2d 965, 969 (3d Cir.1982). Neither may the nonmoving party rest on the allegations in the pleadings. Celotex Corp., 477 U.S. at 324. Rather, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id.[9]

IV. ANALYSIS

A. Title VII Claim

[9] Defendant generally contends that Plaintiff has not presented *any* specific, admissible evidence to create a genuine issue of material fact because the only evidence presented by Plaintiff is his own deposition testimony. Defendant further notes that Plaintiff has not taken a single deposition, and has not conducted any written discovery in this case. See Def.'s Motion at 16. The Court finds troubling Plaintiff's failure to gather or offer any evidence other than his own deposition testimony. However, while mere conclusory allegations and suspicions are insufficient, a party's sworn testimony setting forth detailed factual allegations based upon first-hand knowledge does constitute admissible evidence which may demonstrate a genuine issue of material fact. See Fed. R. Civ. P. 56(e).

As noted, Plaintiff's "First Claim for Relief" alleges a violation of both Title VII and § 1981. See Complaint at ¶¶ 18-27. The First Claim for Relief, to the extent it alleges a violation of Title VII, is untimely. Accordingly, the Court will grant the Motion for Summary Judgment as to the First Claim for Relief to the extent that it alleges a violation of Title VII.

Title VII provides that if the EEOC dismisses a charge or takes no action within a specified period of time, it "shall notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge." 42 U.S.C. § 2000e-5(f)(1). "[T]he time for filing a complaint begins to run when the plaintiff has notice of the EEOC decision," Mosel v. Hills Dept. Store, Inc., 789 F.2d 251, 252 (3d Cir. 1986), and notice is deemed to have been received when either the claimant or his attorney receives the EEOC right-to-sue letter, whichever date is earlier, see Irwin v. Department of Veterans Affairs, 498 U.S. 89, 92-93 (1990). Here, it is undisputed that the EEOC mailed a right-to-sue letter to Plaintiff, and a copy of the letter to Plaintiff's attorney, on November 17, 2000. See Def.'s Motion, Ex. L. In the absence of evidence to the contrary, it is presumed that a plaintiff received his right-to-sue letter three days after the EEOC mailed it. Seitzinger v. Reading Hosp. and Medical Center, 165 F.3d 236, 239 (3d Cir. 1999) (citing Fed. R. Civ. P. 6(e)). "Rule 6(e)'s three-day presumption attempts to ensure that the plaintiff has the benefit of the full ninety-day period when the date of actual receipt is unknown." Id.

Plaintiff has expressly acknowledged that he has no evidence indicating the date upon which he received the right-to-sue letter, or the date upon which his attorney received a copy of the letter, and that he has no memory as to when he received the right-to-sue letter. See Pl.'s

Dep. at 222.[10] For this reason, we must presume that both Plaintiff and Plaintiff's attorney received the right-to-sue letters three days after they were sent, or on November 20, 2000. Ninety days from this date is February 18, 2001, which was a Sunday; thus, Plaintiff had until Monday, February 19, 2001 to file a complaint in this matter. However, it is undisputed that Plaintiff did not file his Complaint until February 20, 2001. In the absence of evidence establishing an equitable reason for disregarding the statutory time, a court cannot extend the limitations period by even one day. Mosel, 789 F.2d at 253. Accordingly, the Court will grant the Motion for Summary Judgment as to the First Claim for Relief to the extent it alleges a violation of Title VII.[11]

B. Section 1985(3) Claim

As noted, Plaintiff's "Second Claim for Relief" alleges a violation of 42 U.S.C. § 1985(3). Section 1985(3) authorizes an "action for the recovery of damages" against "two or more persons" who "conspire" to deprive "any person or class of persons of the equal protection of the laws." 42 U.S.C. § 1985(3). Thus,

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[10] Plaintiff asserts in his Brief that his attorney did not receive the copy of the right-to-sue letter until November 22, 2000, and that this delay was due to the relocation of his attorney's office during the second week of November, 2000, from 3 East North Street to 313 East Broad Street in Bethlehem, Pennsylvania. See Pl.'s Brief at Section III.B. However, Plaintiff conspicuously fails to offer or cite to any evidence to support these factual assertions. Moreover, even if there were evidence to support this allegation, it would not change the result here since there is no evidence or assertion that *Plaintiff* did not receive the original copy of the letter three days after it was sent.

[11] The Court notes that even if Plaintiff's Title VII claim were not barred as untimely, the claim would nonetheless be subject to dismissal based upon the analysis set forth below warranting the dismissal of Plaintiff's § 1981 claims for disparate treatment racial discrimination and hostile work environment.

> in order to state a claim under 42 U.S.C. § 1985(3), a plaintiff must allege: (1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons [of] the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States.

Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997). In the Second Claim for Relief, Plaintiff alleges as follows:

> 30. Defendant, in the persons of [Ms. Carpenter], [Ms. Phelps], and others, conspired together to prevent Plaintiff from exercising the responsibility and authority that he was entitled to as a result of becoming the Department Chairperson. No other employee in a position similar to Plaintiff's position was similarly restricted by Defendant. Plaintiff was the sole African American male instructor to be given such a position within Defendant's organization.
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> . . . .
>
> 32. Plaintiff was discriminated against as a result of his race.
> 33. As a direct and proximate result of Defendant's actions in denying Plaintiff the authority and responsibility that he was entitled to as Department Chairperson in violation of Federal law, specifically 42 U.S.C. 1985(3), Plaintiff sustained damages by way of mental anguish and emotional distress; humiliation and embarrassment; denial of professional standing and reputation; loss of earning and earning capacity, together with fringe and pension benefits; and loss of the enjoyment of the ordinary pleasures of everyday life, including the right to pursue gainful occupation of choice.

Complaint at ¶¶ 30-33. Defendant argues that it is entitled to summary judgment as to Plaintiff's § 1985(3) claim because (1) his factual allegations do not allege a conspiracy under the law, and (2) he has not alleged an adequate deprivation. Because it is clear that Plaintiff's factual allegations fail to allege a conspiracy, Defendant's second argument need not be addressed.

Initially, it is unclear from the face of the Complaint whether Plaintiff intends to allege (1) that Defendant conspired with itself, (2) that Defendant conspired with various employees, or (3) that various employees conspired among themselves. If Plaintiff's § 1985(3) claim is based upon either the first or second of these three possible grounds, it is clear that the claim is insufficient. "It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation." Nelson Radio & Supply Co. v. Motorola, Inc., 200 F.2d 911, 914 (5th Cir. 1952), *cert. denied*, 345 U.S. 925 (1953). In other words, for purposes of § 1985(3), a corporation cannot conspire with itself, nor can a corporation conspire with one of its officers if the officer is acting in an official (as opposed to personal) capacity. See Robison v. Canterbury Village, Inc., 848 F.2d 424, 431 (3d Cir. 1988). Here, Plaintiff has not alleged any conspiracy beyond that of Defendant conspiring with various employees in their *official* capacities, and for this reason Defendant is entitled to summary judgment as to Plaintiff's § 1985(3) claims. See id.

Apparently recognizing that neither the first nor the second ground would survive the Motion for Summary Judgment, Plaintiff explicitly contends in his opposition brief that he "claims that three individual defendants named in James's complaint conspired against him." Pl.'s Brief at III.F.2. However, Defendant Allentown Business School is the only named defendant in the instant action, and the three individuals to whom Plaintiff refers are not named defendants.

Thus, Defendant is entitled to Summary Judgment as to Plaintiff's § 1985(3) claim because Plaintiff has failed to allege a conspiracy.

C. Section 1981 Claim

Having addressed the First Claim for Relief to the extent it alleges a violation of Title VII, and the Second Claim for Relief (§ 1985(3)), the Court now turns to the First Claim for Relief to the extent that it alleges a violation of § 1981. A careful reading of the Complaint indicates that Plaintiff apparently asserts both a "disparate treatment" claim and a "hostile work environment" claim pursuant to § 1981. See Complaint at ¶¶ 18-27. The Court will address each of these two claims in turn.

1. Disparate Treatment

Section 1981, which prohibits racial discrimination in the making and enforcement of contracts and property transactions, provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

42 U.S.C. § 1981(a). Plaintiff's disparate treatment racial discrimination claim under § 1981 is analyzed according to the same legal framework as a disparate treatment racial discrimination claim under Title VII. Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999). In the absence of direct evidence, a plaintiff may establish discrimination through circumstantial evidence using the burden-shifting approach established in a number of United States Supreme Court cases. See McDonnell Douglas v. Green, 411 U.S. 792 (1973); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993). First, the plaintiff must set forth a *prima facie* case of discriminatory discharge by

establishing that: (1) he is in a protected class; (2) he is qualified for the position; and (3) he suffered an adverse employment action (4) under circumstances that give rise to an inference of unlawful discrimination. See Pivirotto v. Innovative Sys., Inc., 191 F.3d 344, 356-57 (3d Cir. 1999); Waldron v. SL Indus., Inc., 56 F.3d 491, 494 (3d Cir. 1995).

a. Plaintiff's *Prima Facie* Case

For purposes of its Motion for Summary Judgment, Defendant does not dispute that Plaintiff is a member of a protected class, or that he was qualified for the position. Def.'s Motion at 21. As to the third element of the *prima facie* case, Defendant argues that the only action taken by Defendant which could constitute an "adverse employment action" is the termination of Plaintiff, and Plaintiff does not appear to dispute this contention. Id. at 20-21; Pl.'s Brief at III.D.2. As to the fourth element, Defendant argues that Plaintiff cannot establish that he was terminated under circumstances giving rise to an inference of unlawful discrimination. Def.'s Motion at 21.

The first question, then, is whether the evidence that Plaintiff has brought forward is sufficient to create a genuine issue of material fact as to whether the decision to terminate him was based upon an illegal discriminatory criterion. Plaintiff has set forth, and the Court must take as true for purposes of this Motion for Summary Judgment, the following factual allegations (previously set forth in detail in Section I): (1) that Ms. Kaplan subjected Plaintiff to various forms of harassing conduct between 1992 and 1997, see Pl.'s Dep. at 35, 37; (2) that Plaintiff was publicly humiliated by Ms. Phelps on two occasions when she berated him in front of teachers and students, see id. at 118-30, 184-89; (3) that Plaintiff was not permitted to have input into which classes he and his Department instructors would teach while other department

chairpersons did have such input, see id. at 90-98; (4) that a teacher at the School referred to Plaintiff using a racial slur, and that minimal corrective or punitive steps were taken by the School in response, see id. at 158-63; and (5) that the document with a picture of Adolph Hiter and a racist poem was forwarded to Plaintiff by his supervisors who had first reviewed the document, see id. at 104-06.

Defendant argues that Plaintiff has failed to bring forward sufficient evidence to establish the fourth prong of the *prima facie* case. In support of this argument, Defendant makes a number of points. The first is that the individual who terminated Plaintiff's employment in 1999, Ms. Carpenter, was also involved in the decision to promote him to the position of Department Chairperson just eighteen months earlier in 1998. See Carpenter Decl. at ¶¶ 4, 8. Defendant cites a number of cases from outside this Circuit for the proposition that, in cases where the individual who terminates the plaintiff's employment also hired (or promoted) the plaintiff a relatively short time prior to the termination, a strong inference exists that discrimination was not a determining factor for the termination. See, e.g., Proud v. Stone, 945 F.2d 796, 797-98 (4th Cir. 1991) (applying inference in age discrimination case); Brown v. CSC Logic, Inc., 82 F.3d 651, 658 (5th Cir. 1996) (applying inference in age discrimination case); Buhrmaster v. Overnite Transp. Co., 61 F.3d 461, 464 (6th Cir. 1995) (holding that inference should apply to all types of discrimination cases), *cert. denied*, 516 U.S. 1078 (1996); LeBlanc v. Great American Ins. Co., 6 F.3d 836, 847 (1st Cir. 1993) (applying inference where same individual who fired plaintiff approved transfer and pay raise for plaintiff in age discrimination case); Lowe v. J.B. Hunt Transport, Inc., 963 F.2d 173, 175 (8th Cir. 1992) (applying inference where same people hired and fired plaintiff in age discrimination case).

The Third Circuit Court of Appeals in Waldron v. SL Industries, Inc., 56 F.3d 491 (3d Cir. 1995), addressed this issue in a footnote, stating that where the individual who fired the plaintiff also hired him, and where the termination occurred soon after the plaintiff was hired, such facts do constitute *evidence* of non-discrimination, but do not create an *inference* that is accorded any presumptive value. Id. at 496, n.6. Therefore, although the facts here do not create an inference of non-discrimination that should be accorded any presumptive value, they do constitute some evidence that Plaintiff's termination was not motivated by discriminatory animus.

However, as in Waldron, the Court here perceives at least two plausible explanations for why Ms. Carpenter would have promoted Plaintiff in 1998 even if she, in fact, held some racially discriminatory animus toward him which motivated her decision to fire him in 1999. First, Plaintiff testified in his deposition that he was the only person to apply for the position of Department Chairperson in 1998. See Pl.'s Dep. at 83. Thus, taking Plaintiff's factual allegations as true, it is plausible that Ms. Carpenter felt that she had no choice but to promote Plaintiff to the position despite harboring racially discriminatory feelings. Second, the decision to promote Plaintiff was made not only by Ms. Carpenter, but by Ms. Phelps and Ms. Gorr as well. Thus, it is plausible that Ms. Carpenter, if acting alone, would not have chosen to promote Plaintiff due to racially discriminatory feelings, but that, because the decision was made by all three individuals, Plaintiff was promoted. The existence of such plausible explanations lessens the evidentiary value of the fact that Ms. Carpenter, who made the decision to fire Plaintiff, was also involved in the decision to promote him eighteen months earlier.

Defendant's second point with regard to its argument that Plaintiff cannot establish circumstances giving rise to an inference of discrimination is that Plaintiff has offered no evidence, other than his own conclusory allegations and hearsay testimony, that similarly-situated individuals outside the protected class were treated more favorably than Plaintiff. The Court agrees that Plaintiff's deposition testimony contains only conclusory allegations and hearsay regarding the School's allegedly more favorable treatment of similarly-situated individuals outside the protected class, and that such testimony is insufficient to establish a genuine issue of material fact as to this issue. See, e.g., Ferrell v. Harvard Industries, Inc., 2001 WL 1301461, at *16 (E.D. Pa. 2001); Fitchett v. Stroehmann Bakeries, Inc., 1995 WL 560028, at *3 (E.D. Pa. 1995); Blackburn v. United Parcel Service, Inc., 179 F.3d 81, 95 (3d Cir. 1999) (a hearsay statement that would be inadmissible at trial should not be considered on a summary judgment motion).[12]

For example, Plaintiff testified during his deposition that a particular African-American instructor told Plaintiff that he was also mistreated by Ms. Kaplan, but Plaintiff was unable to recall the individual's last name. See Pl.'s Dep. at 67-68. Moreover, Plaintiff has neither deposed this individual, nor obtained an affidavit from him to support these factual allegations.[13]

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[12] As noted above, Plaintiff did not conduct any depositions or seek to obtain an affidavit or declaration from any witnesses during discovery in this matter, nor does Plaintiff himself claim to have witnessed any pertinent comparative evidence. As a result, Plaintiff is unable to present as comparative evidence any first-hand testimony regarding the School's treatment of other instructors.

[13] In his Opposition Brief, Plaintiff states: "Although Plaintiff was unable to recall Reggie's last name at the time of his deposition, this witness will be identified and presented at trial if at all possible." Pl.'s Brief at Section II. Plaintiff appears not to understand that the Court's authority to grant motions for summary judgment exists in order to weed out,

(continued...)

Also by way of example, Plaintiff testified that numerous Caucasian instructors fraternized with students but were not reprimanded or in any was disciplined as was Plaintiff. See Pl.'s Dep. at 246-62. Although Plaintiff provided the names of some of these individuals, Plaintiff's information is based solely on hearsay statements and presumptions, and Plaintiff has not deposed or obtained an affidavit from any individuals with first-hand knowledge of such facts. See id.[14] In summary, Plaintiff's allegation that similarly-situated individuals outside the protected class were treated more favorably than Plaintiff is not supported by any evidence other than Plaintiff's own conclusory allegations and hearsay testimony, and such evidence is insufficient for purposes of this Motion for Summary Judgment.

It is true that a plaintiff is not necessarily required to show that employees outside of the protected class were treated more favorably, and that such evidence is only one way in which a plaintiff may produce evidence sufficient to create an inference that the employment decision was based upon an illegal discriminatory criterion. Pivirotto v. Innovative Systems, Inc., 191 F.3d 344, 356-57 (3d Cir. 1999). However, in this case, the absence of any such evidence is particularly detrimental to Plaintiff's case since, other than the racial slur used by a teacher to

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[13](...continued)
prior to trial, cases in which the plaintiff has failed to gather sufficient admissible evidence during discovery to support his claims.

[14] Also by way of example, Plaintiff alleged during his deposition that other department chairpersons had significant input into which courses they would teach, while Plaintiff did not. See Pl.'s Dep. at 90-93. Plaintiff stated he believes this to be true based upon his conversations with other department chairpersons, but he acknowledged that it is possible other chairpersons were treated similarly without Plaintiff being aware of it. Id. at 96. Plaintiff further declared that he would produce witnesses to "attest" to these factual allegations. Id. at 93. However, as noted, Plaintiff has conducted no discovery, and has offered no evidence in response to the Motion for Summary Judgment other than his own deposition testimony.

refer to Plaintiff, and the racist poem forwarded to Plaintiff, none of the factual allegations set forth by Plaintiff inherently suggest racial animus.[15]

Moreover, the two incidents involving racial animus on their face do not tend to implicate the School or indicate that racial animus motivated the School's termination of Plaintiff. As to the racial slur used by Ms. Colusso in referring to Plaintiff, there is no dispute that the day after the meeting in which this incident was brought to her attention: Ms. Carpenter spoke with Ms. Colusso to confirm the allegation; Ms. Carpenter verbally reprimanded Ms. Colusso; and Ms. Carpenter then told Plaintiff that she had spoken to Ms. Colusso, that such comments would not be tolerated, and that he should contact her immediately if any such conduct occurred again. See id. at ¶ 16; Pl.'s Dep. at 163. Plaintiff has not offered any evidence of other incidents in which employees used offensive language referring to individuals outside the protected class which resulted in more severe consequences. Thus, it is not clear how this incident, involving a racial slur by a co-employee, an immediate reprimand by Ms. Carpenter, and an absence of any future similar incidents, supports the conclusion that Plaintiff's supervisors were motivated by racial animus.[16]

As to the poem forwarded to Plaintiff, Ms. Carpenter averred in her declaration that she had not seen this document prior to the EEOC investigation in this matter. See Carpenter Decl.

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[15] In other words, all of the other factual allegations, even if true, are facially neutral, and, taken alone, demonstrate only that Plaintiff may have been treated poorly by his supervisors.

[16] Plaintiff's contention that this incident warranted a more severe response by the School is belied by his own testimony that, prior to this incident, he and Ms. Colusso had a very close friendship, that he had a productive conversation with her about her remarks, and that, after he spoke with Ms. Colusso, their relationship got "back on track." See Pl.'s Dep. at 159-62.

at ¶ 27. Further, according to the declaration testimony of Ms. Phelps, she also did not see this document prior to Plaintiff's discharge from the School. See Phelps Decl. at ¶ 7. Plaintiff, on the other hand, alleges that Ms. Carpenter opened the envelope containing the document with the racist poem, that both she and Ms. Phelps viewed the document and read the poem, and that Ms. Carpenter then decided to forward the document to Plaintiff. Pl.'s Dep. at 103-06. This would initially appear to create a genuine issue as to whether Ms. Carpenter knowingly forwarded to Plaintiff a racist poem (which fact would be material as it would likely have some impact upon a reasonable juror's determination as to whether Ms. Carpenter was motivated by racial animus).

However, the only evidence offered by Plaintiff in support of his version of the facts is his own deposition testimony that, upon receiving the document, he spoke with Ms. Phelps who allegedly told him that Ms. Carpenter had opened the envelope and had seen the document, and that Ms. Phelps counseled Ms. Carpenter not to forward it to Plaintiff, but that Ms. Carpenter had nonetheless done so. See Pl.'s Dep. at 103-06. Plaintiff did not depose either Ms. Phelps or Ms. Carpenter, and the declarations of Ms. Phelps and Ms. Carpenter flatly contradict Plaintiff's allegations. Thus, Plaintiff has offered only his own hearsay testimony regarding this issue (which is not to be considered on a summary judgment motion if it would be inadmissible at trial), while Defendant has offered the first-hand testimony of Ms. Carpenter and Ms. Phelps. Plaintiff has therefore failed to establish a genuine issue of material fact on this issue.

In addition to the fact that the facially suspect incidents do not suggest racial animus on the part of Defendant, and the fact that the remaining incidents in question are racially neutral, Plaintiff's testimony tends to reveal that even he is not fully persuaded that his supervisors' treatment of him was motivated by racial animus. For example, Plaintiff did not allege during

his deposition that any of Ms. Carpenter's actions during his employment, including her termination of Plaintiff's employment, were motivated by racial animus. See Pl.'s Dep. at 35-36, 76, 78, 107-08. In fact, Plaintiff stated: "My relationship with Mrs. Carpenter was always amicable – I – always amicable and professional." Id. at 107. Also, Plaintiff testified that he does not believe the August, 1999 performance appraisal from Ms. Gorr (addressing Plaintiff's tendency "to manage by fear and intimidation," his "fraternizing with students," and his "abrasive" management style, and summarizing Plaintiff's performance as merely "adequate") was motivated by racial discrimination, but only that the appraisal was substantively "inaccurate." Pl.'s Dep. at 195-96. Most significantly, when asked during his deposition to explain the basis for his belief that the decision to terminate his employment was motivated by discrimination, Plaintiff was literally unable to provide any answer other than to read aloud the allegations as set forth in his Complaint. See Pl.'s Dep. at 218-20.

In summary, the competent evidence of record leads to only once conclusion: the discordant relationship between Plaintiff and the School was, in fact, due to a combination of a fundamental difference in educational philosophies between Plaintiff and the School,[17] as well as Plaintiff's own performance as an educational instructor. The Court concludes that the evidence

[17] Curiously, although Plaintiff does not appear to believe that this fundamental disparity in educational philosophies was a significant factor in his termination, Plaintiff clearly acknowledges its existence. Plaintiff explained during his deposition that he believed students at the School needed to be firmly pushed, and that he was strict and frequently confrontational in his classes, while the School and his supervisors placed a much greater emphasis on ensuring that students enjoyed the educational experience and on minimizing the complaints filed by students. Plaintiff's own sentiments regarding the differences between his and the School's educational philosophies is evident in Plaintiff's deposition testimony regarding an instructor named Mr. Dilcher who, Plaintiff said, had initially taken a similar, hard-line approach to teaching as Plaintiff, but who had eventually "sold out" (in Plaintiff's words) because he had ultimately embraced the priorities of the School. See Pl.'s Dep. at 176-82.

offered by Plaintiff is insufficient to satisfy his burden of establishing a genuine issue as to whether he was terminated under circumstances giving rise to an inference of discrimination. Because Plaintiff is unable to satisfy his burden of establishing a *prima facie* case of discrimination, Defendant is entitled to summary judgment as to Plaintiff's disparate treatment claim under § 1981.

b. Pretext

Even assuming *arguendo* that Plaintiff were able to establish a *prima facie* case, Defendant would nonetheless be entitled to summary judgment on this disparate treatment claim because the evidence does not establish that Defendant's proffered reason for terminating Plaintiff is pretextual. Generally, once a plaintiff establishes a *prima facie* case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its employment decision. Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir.1994).

> The employer satisfies its burden of production by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision. The employer need not prove that the tendered reason actually motivated its behavior, as throughout this burden-shifting paradigm the ultimate burden of proving intentional discrimination always rests with the plaintiff. Once the employer answers its relatively light burden by articulating a legitimate reason for the unfavorable employment decision, the burden of production rebounds to the plaintiff, who must now show by a preponderance of the evidence that the employer's explanation is pretextual . . . .

Id. (citations omitted). Specifically, in order to withstand a motion for summary judgment where the plaintiff has established a *prima facie* case and the defendant has articulated a legitimate, nondiscriminatory reason for its employment decision, "the plaintiff must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve

the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Id. at 764. "[T]he non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them 'unworthy of credence,' and hence infer 'that the employer did not act for [the asserted] non-discriminatory reasons.'" Id. at 765 (citations omitted).

Here, Defendant has clearly satisfied its burden by bringing forth substantial evidence that the reason for Plaintiff's termination was his unsatisfactory job performance. Taking the facts alleged by Defendant as true, such facts indicate that Plaintiff routinely belittled, humiliated and demeaned his students, that Plaintiff's students found his behavior to be condescending, insulting, and discouraging, that Plaintiff was abrasive, harsh, and impolite in his interactions with instructors as well as individuals outside the School, that Plaintiff acted in an insubordinate manner toward his superiors, and that Plaintiff engaged in intimate relationships with students in violation of the School's policy. The evidence further indicates that the School and Plaintiff's supervisors, over a period of more than six years, made numerous attempts to explain to Plaintiff the deficiencies in his teaching style, and provided Plaintiff numerous opportunities to improve.

Plaintiff has simply offered no evidence to refute Defendant's proffered nondiscriminatory reason other than his own conclusory allegations that he, in fact, was a successful instructor and that any shortcomings in his job performance were not the reason for his termination. Such evidence does not satisfy Plaintiff's burden of bringing forth evidence sufficient "to support a reasonable inference that the reasons given for the employment decision

are pretextual." Billet v. CIGNA Corp., 940 F.2d 812, 816 (3d Cir. 1991), *abrogated on other grounds*, St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 517-18 (1993).[18]

For these reasons, the Court concludes that Defendant is entitled to summary judgment as to Plaintiff's disparate treatment claim under § 1981.

2. Hostile Work Environment

Plaintiff's hostile work environment claim under § 1981 is analyzed in the same way as a hostile work environment claim under Title VII. See, e.g., Harley v. McCoach, 928 F.Supp. 533, 538 (E.D. Pa. 1996).

> In order to establish a claim for employment discrimination due to an intimidating or offensive work environment, a plaintiff must establish, "by the totality of the circumstances, the existence of a hostile or abusive environment which is severe enough to affect the psychological stability of a minority employee." Specifically, a plaintiff must show: (1) that he or she suffered intentional discrimination because of race; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same race in that position; and (5) the existence of respondeat superior liability. As the Supreme Court has emphasized: "whether an environment is 'hostile' or 'abusive' can be determined only by looking at the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."

[18] Ironically, Plaintiff alleges in his Brief that "[i]t is significant to note that . . . [Plaintiff] was subsequently hired by DeSales University, where he is currently employed, and where he has received accolades, but no complaints." Pl.'s Brief at Section II. In fact, in his "Faculty Evaluation Report" from DeSales University dated December 20, 2001, Plaintiff received an overall rating of "unsatisfactory,"and Plaintiff was criticized for picking on students, for being arrogant, "cocky," condescending, and "unapproachable." See Def.'s Reply, Ex. A. Such evidence only strengthens the Court's conclusion that Plaintiff has failed to show that Defendant's proffered reason for terminating Plaintiff's employment is pretextual.

Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1081 (3d Cir. 1996) (citations omitted). "[T]he advent of more sophisticated and subtle forms of discrimination requires that we analyze the aggregate effect of all evidence and reasonable inferences therefrom, including those concerning incidents of facially neutral mistreatment, in evaluating a hostile work environment claim." Cardenas v. Massey, 269 F.3d 251, 261-62 (3d Cir. 2001).

Plaintiff contends that the same factual allegations addressed above are sufficient to demonstrate a hostile work environment, namely: (1) that Ms. Kaplan subjected Plaintiff to various forms of harassing conduct between 1992 and 1997; (2) that Plaintiff was publicly humiliated by Ms. Phelps on two occasions when she berated him in front of teachers and students; (3) that Plaintiff was not permitted to have input into which classes he and his Department instructors would teach while other department chairpersons did have such input; (4) that a teacher at the School referred to Plaintiff using a racial slur, and that minimal corrective or punitive steps were taken by the School in response; and (5) that the document with a picture of Adolph Hiter and the racist poem was forwarded to Plaintiff by his supervisors who had first reviewed the document. See Pl.'s Brief at III.D.3.[19]

As explained in the previous section addressing Plaintiff's disparate treatment claim, Plaintiff has not offered any evidence, other than his own conclusory allegations and hearsay testimony, to suggest that any of the facially-neutral incidents were motivated by racial animus.[20]

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[19] The Court notes that Plaintiff has set forth only a single paragraph summarily addressing his hostile work environment claim, in which he refers generally to all of the evidence discussed earlier in the Brief, and in which he fails to set forth the legal standards for such claims and fails to cite even a single case. See Pl.'s Brief at III.E.

[20] The kind of evidence from which a jury might find ethnic animus underlying (continued...)

Moreover, the racial slur used by Ms. Colusso, a co-employee, which was promptly followed by a reprimand from Ms. Carpenter, is not an act that can be imputed to the School under the doctrine of *respondeat superior*. Weston v. Pennsylvania, 251 F.3d 420, 427 (3d Cir. 2001) ("when the source of the alleged harassment is a co-worker, a plaintiff must demonstrate that the employer failed to provide a reasonable avenue for complaint, or, if the employer was aware of the alleged harassment, that it failed to take appropriate remedial action").[21] As to acts which overtly involve racial animus and which might arguably be imputed to the School, there is only the poem written by a student and, according to the hearsay testimony of Plaintiff, forwarded to Plaintiff by his supervisors after they read the poem. Even if Plaintiff were able to provide more than hearsay evidence to support this factual allegation, such evidence would not demonstrate the kind of pervasive and regular discrimination required for a hostile work environment. See Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) (cautioning that isolated incidents, unless extremely serious, are insufficient for a hostile work environment claim); Drinkwater v. Union Carbide Corp., 904 F.2d 853, 863 (3d Cir.1990) (two sexually stereotyped discriminatory comments do not constitute continuous, pervasive discrimination). For this reason, Plaintiff's § 1981 hostile work environment claim will also be dismissed.

IV. CONCLUSION

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[20](...continued)
other ostensibly nondiscriminatory incidents includes: (1) disproportionate assignment of minority employees to the only unit supervised by a minority manager; (2) consistently lower performance evaluations for a protected class member as compared to non-protected co-workers. Cardenas, 269 F.3d at 262.

[21] The Court notes that Plaintiff has not alleged that Ms. Colusso used racial slurs again after being reprimanded, and that "when an employer's response stops the harassment, there can be no employer liability." Weston, 251 F.3d at 427.

In summary, the Court concludes that Defendant is entitled to summary judgment as to all of Plaintiff's claims. An order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J. DAVID JAMES, Plaintiff,	: :	CIVIL ACTION
v.	:	NO. 01-857
ALLENTOWN BUSINESS SCHOOL, Defendant.	: :	

O R D E R

AND NOW, this day of May, 2003, upon consideration of Defendant's Motion for Summary Judgment (Docket Entry No. 12), it is hereby ORDERED that the motion is GRANTED. Pursuant to Fed. R. Civ. P. 58, judgment is hereby entered in favor of Defendant Allentown Business School and against Plaintiff J. David James. The Clerk of Court is directed to close this matter for statistical purposes.

BY THE COURT:

Legrome D. Davis